

PLAINTIFFS' EXHIBIT 9

1 Eclipse didn't?

2 A. Oh, I think this is when they had hooks
3 or anchors on the shoulders. But I can't remember
4 if that's the Meridian or the Denali, which one is
5 which. It's been a while.

6 (Exhibit 26 marked for identification.)

7 BY MR. O'CONNOR:

8 Q. It's getting a little confusing now,
9 isn't it? Because this e-mail on Exhibit 26 is
10 dated December 13, 2011; right?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes. Sorry.

14 Q. And we've gone from G2 being discontinued
15 in April of 2010 to the Eclipse, to the Meridian in
16 early 2011, and now here we are at the end of 2011
17 and they're still talking about the G2 filter being
18 discontinued. Do you see that?

19 A. I do.

20 Q. How did you keep up?

21 A. How did I keep up with what?

22 Q. Well, this changing and what you were
23 supposed to do. I mean, one minute the G2 is being
24 discontinued, the next minute it's gotta make a
25 comeback because they don't have the Meridian

1 ready. How were you able to work your job and get
2 the filters out there and promote and educate these
3 doctors?

4 A. I don't recall exactly, to answer your
5 question, how I kept up. I don't necessarily know
6 what you're asking.

7 Q. Was it a time you're trying to just
8 forget and put behind you?

9 A. No. It's over six years ago, or six
10 years ago. I just don't remember my day-to-day
11 activities six years ago extremely well.

12 Q. Well, do you know who Kim Romney is?

13 A. I know the name. I don't know her
14 personally, no.

15 Q. She says, "Sales of the G2 filter is now
16 obsolete. Our inventory is exhausted and customer
17 service can no longer take orders." You see where
18 I read?

19 A. I do.

20 Q. Then she goes on to say that, "I know you
21 are all in transition right now with the
22 realignment, but please help us see this through by
23 checking in with your G2 accounts to confirm that
24 they successfully switched to the Meridian." Did I
25 read that correctly?

1 A. You did.

2 Q. And then she goes on to say, "If you're
3 not sure which accounts to switch, or sure which
4 accounts these are, please check with your DMs, who
5 have a current list of G2 accounts in your
6 territories." Did I read that correctly?

7 A. You did.

8 Q. And your DM was Tim Hug?

9 A. It looks like it at the time, yes.

10 Q. And did you call him and say what are my
11 territories?

12 A. I don't know if I called him. I mean, it
13 looks like I e-mailed him here about UW, but I
14 don't know that I called him about this.

15 Q. If Tim was a poor communicator, it looks
16 like that was happening throughout the company,
17 because you see it and I see it, how many times was
18 the G2 discontinued just in our discussion today?
19 Couple times.

20 MR. BROWN: Object to the statement.

21 THE WITNESS: Yeah, I don't recall.

22 BY MR. O'CONNOR:

23 Q. Sounds like there were problems with
24 communication, doesn't it?

25 MR. BROWN: Object to the form.

1 THE WITNESS: Well, you have to remember,
2 I think that there's -- one of the issues going on
3 here is that there's customers that like the G2,
4 probably, that continued to use and use and use and
5 use and use, and some saw no reason to try out a
6 new product because they were -- you know, the
7 performance of the G2 worked for them, so they
8 didn't want to switch out to it. I'm sure that's
9 part of it.

10 BY MR. O'CONNOR:

11 Q. Well, see, here's why I don't see it that
12 way. Because we just went through an e-mail that
13 said they were bringing the G2 back.

14 A. Okay.

15 Q. You remember that?

16 A. Sure.

17 Q. Let's look at your problem. And your
18 problem looks like it's up on top here.

19 A. Okay.

20 Q. You say, "It's gonna hurt us with UW
21 Hospital's OR order."

22 MR. BROWN: Object to the form.

23 BY MR. O'CONNOR:

24 Q. Oh -- no, I'm sorry, you're right. I'll
25 sustain that. "Is this going to hurt us with the

To: Fermanich, Matt[Matt.Fermanich@crbard.com]
From: Hug, Tim
Sent: Tue 12/13/2011 6:42:48 PM
Importance: Normal
Subject: Re: G2 Filter Discontinued
Received: Tue 12/13/2011 6:42:48 PM
image001.gif

No...they ordered eclipse

Tim Hug

"Fermanich, Matt" <Matt.Fermanich@crbard.com> wrote:

Is this gonna hurt us with UW Hospital's OR order?

From: Romney, Kim
Sent: Tuesday, December 13, 2011 11:26 AM
To: TPE-PV Sales-DG; TPE-Marketing-DG
Cc: Everett, Annette; Seisinger, Raye; Warren, Kathleen
Subject: G2 Filter Discontinued

Sales Team,

The **G2 Filter (RF310F and RF320J)** is now **obsolete**. Our inventory is exhausted and customer service can no longer take orders. I know you all are in transition right now with the realignment but please help us see this through by **checking in with your G2 accounts to confirm that they've successfully switched to the Meridian Filter (MD800F and MD800J)**. If you are not sure which accounts these are, please check with your DM's who have a current list of G2 accounts in your territories.

Thanks,



Kim Romney

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